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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Letter dated 23 October 2017 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the observations and comments of the Government of Myanmar on the report of Yanghee Lee, the Special Rapporteur on the situation of human rights in Myanmar, as contained in document A/72/382 of 8 September 2017 (see annex).*

I would appreciate it if the present letter and its annex could be circulated as a document of the General Assembly under agenda item 72 (c).

(*Signed*) Hau Do **Suan**
Ambassador
Permanent Representative

* The annex is being circulated in the language of submission only.

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Annex to the letter dated 23 October 2017 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

Observations and comments of the Government of Myanmar on the report of the Special Rapporteur on the situation of human rights in Myanmar covering up to 25 August 2017

II. Consolidating democracy and creating a culture of human rights

A. Ensuring greater respect for the rule of law

On para 8: Dispensing justice without fear or favour

For judicial independence and separation of powers in legislative, executive and judiciary sectors, Sections 300, 301, 309 and 310 of the Constitution require the Chief Justice of the Union or Judges of the Supreme Court of the Union and Judges of the High Court of the Region or State to be free from party politics and to have retired from civil service otherwise.

Practicing judicial independence is clearly stated in Section 19 of the Constitution and Section 7 of the Union Judiciary Law and Bangalore Principles of Judicial Conduct is applied as a model. In 2012, Supreme Court of the Union issued directives to all courts to practice fair, efficient and effective judicial functions.

B. Constitutional and legislative reform

General Comment

Since its inception in February 2016, Commission for the Assessment of Legal Affairs and Special Issues have reviewed over 395 bills and laws in common use. It is recommended that 198 laws be amended, repealed or redrafted. At the conclusion of Second Pyidaungsu Hluttaw Session on 1 September 2017, eight new laws were enacted, eleven laws were amended and one law was revoked. The legislative backlog is continuing and requires prioritization.

On para 12 and 13: Laws to be inconformity with international human rights standards

In general practice, draft laws are published in daily newspapers and written comments are invited from the public. Views by the public are taken into consideration and relevant stakeholders including NGOs are invited for consultation in drafting process.

Amending or drafting laws falls within Parliaments' jurisdiction. The members of Parliaments are working relentlessly towards domestic legislation review process with a view to amending or repealing laws which are outdated or are hindering people's enjoyment of certain rights. The Pyidaungsu Hluttaw Commission for the Assessment of Legal Affairs and Special Issues is particularly responsible for such an undertaking.

On para 15: Addressing four laws adopted in 2015 and amendments to the Penal code

Domestic laws in Myanmar are born out of political, economic, social, cultural, historical and religious backgrounds. They also reflect and capture views and opinion of general public. The need to strike a careful balance with its international legal obligations has been thoroughly reviewed in relation to the four law adopted in 2015.

C. Safeguarding democratic space

On para 21: Risk to freedom of expression and opinion by the Telecommunications Law

In response to strong public views and opinions, intense debates were held on section 66 (d) of the Telecommunications Law at Pyithu Hluttaw and Amyotha Hluttaw in the first half of the year 2017. As a result, Pyidaungsu Hluttaw adopted Law amending the Telecommunications Law on 29 August 2017. The amended law provide for relaxation of prison sentence. The new section 80(c) enhances responsibility and accountability on the part of complainants.

On 9 September 2017, the cases filed under 66 (d) of the Telecommunications Law and article 500 of the Penal Code against Wai Phyo from The Daily Eleven Newspaper, Kyaw Min Swe and Kyaw Zwa Naing from The Voice Daily and nine high school and university students who were involved in a satirical play, were placated by the Myanmar Military. They were dismissed without charges.

On Para 24: Unlawful Association Act

Debates on the 1908 Unlawful Association Act in both parliaments are ongoing.

The three journalists were arrested for covering the drug burning ceremony by the Ta'ang National Liberation Army under section 17 (1) of the 1908 Unlawful Association Act. During custody they had access to due legal process, legal representation and healthcare services. On 1 September 2017, they are dismissed without charges.

On para 25: Lack of transparency on Blacklist

A person attempted to disturb the national security, stability and development of the State shall be placed under the blacklist or to delist by recommendations of relevant authorities including the Ministry of Home Affairs. Listing or delisting of blacklist is also based on the seriousness of the crime that they have committed. The person under blacklist can make a request to the government to be delisted. To prevent security breach, the concerned person is not being informed of the process. Human rights activists are not in the blacklist.

IV. Towards national reconciliation and peace

A. Conflict-related rights violations and the peace process

On para 38: Alleged use of human shield

The Myanmar military (Tatmadaw) fully understands and follows the principle of protecting the civilians during conflict. Therefore, attacking civilians, destroying houses and properties and laying of land mile in the villages are not allowed. On the contrary, some armed groups forcibly relocated civilians population into their controlled area as IDP and used the mass human shield to minimize their causality.

The Myanmar military has been abiding not only domestic laws, orders and directives but also fulfilling international obligations in Law of War, and Law of Armed Conflict. carefully analysis the conditions The basic principle of the distinction, military necessity, unnecessary suffering, proportionality, precaution and avoiding indiscriminate attacks are strictly followed.

On para 44: Laying of new mines

Mine Risk Education programme has been started since 2012 and in line with United Nations Convention on the Rights of Child (CRC). The Inter-agency Working group was formed to conduct trainings and workshops on Mine Risk Education at states, regions and national level. State level working groups to strengthen mine risk reduction awareness programme were established in conflict areas including Kachin, Kayah and Nothern Shan State. In 2017–2018, fifty mine victims received financial support of 200,000kyat each from Ministry of Social Welfare, Relief and Resettlement. In order to publishmines-awareness publications, a survey was done on knowledge, attitude and practice in Kayah, Mon, Kayin, Bago and Taninthayi with the collaboration of UNICEF, INGOs and NGOs.

B. Protecting the rights of women and children

On para 54: Draft Prevention and Protection of Violence Against Women Law

The Protection and Prevention of Violence Against Women bill is being drafted to prevent sexual and domestic violence, harassing in work place and public, harmful traditional practices and tracking disturbance. The bill will be submitted to the Parliament for approval.

C. Combating and preventing religious intolerance and incitement to hatred and violence

General Comment

Myanmar is a multi-racial and multi-faith nation. The State Constitution does not allow discrimination based on race, birth, religion, official position, status, culture, sex and wealth. Article 34 of the State Constitution guarantees the right to freely profess and practice religion. Christianity, Islam, Hinduism and Animism are recognized as the religions existing in the Union on the day of coming into operation of the State Constitution.

On para 58: Mingalar Taung Nyunt incident

In relation to the Mingalar Taung Nyut Township case, five out of seven Buddhist extremists who involved in the incident has been arrested and filed under case 1/2017 of non-cognizable offence for their attempt to commit a crime with the aim of disturbing the stability of the State by spreading hatred and incitement.

D. Rakhine State

On para 66: Freedom of movement

The NVC card holders are able to travel up to (45) days with the permission of the State immigration officer. However, travel permissions for medical reason are being issued to non-NVC card holders. At the same time, security concern has prevented many locals to travel frequently.

On para 67: Access to education

General Comment

With the vision of making education available for all school-aged children, the Ministry of Education initiated a new system which waives school fees for students at all level throughout the country.

Moreover, the government provided, free of charge, text books, exercise books and school uniforms for all primary school students. Text books will also be provided free of charge to lower secondary school students. In addition, the government is making efforts to reduce school drop-out rates in the country.

Education in Buthidaung and Maungdaw Townships

In the 2017–2018 academic years, the government upgraded 12 schools in Buthidaung and Maungdaw and built 3 new primary schools. Altogether 300 schools have been upgraded in Rakhine State.

The Ministry of Education, in cooperation with Rakhine State government, started the basic literacy campaign in 10 townships in Rakhine State starting from June 2017. The Ministry of Border Affairs has spent Kyats 300 million to renovate 20 public schools in Muslim villages in 6 townships. The government has reopened all schools in Maungdaw area, which had been temporarily closed.

Muslims also have access to higher education. Official records show that many Muslim students are attending universities in Rakhine. Currently, there are (5) Muslim students in Sittwe University and 27 in TaungKote Degree College. A total of 1,888 Muslim students sat for the matriculation examination in 2017.

On para 70: Access to health

The government is drawing a Master Plan to expand and upgrade Sittwe Hospital with international assistance. The hospital building is being expanded with the assistance of Norwegian government.

In cooperation with INGOs and NGOs, vital primary healthcare services are being provided. Forty mobile health clinics are operating in 208 temporary camps and villages in 12 townships in southern and northern parts of Rakhine including Buthidaung and Maungdaw. From January to June 2017, a total of 107,221 patients were treated by mobile health clinics while 489 emergency cases were referred to hospitals. Moreover, as a special project, mobile health teams are operating in hard to reach areas to provide immunization service, and primary healthcare service with the assistance of the WHO.

The government and the WHO will jointly implement a more comprehensive healthcare project with mobile clinics in Buthidaung and Maungdaw townships, starting from July 2007. Healthcare services are provided without discrimination and in line with medical ethics. The government encourages people in Rakhine State to cooperate in the efforts to ensure that all people living in the State have access to education and healthcare services without discrimination. The announcements regarding health and education are made in public areas as well as in IDP camps using posters in Myanmar and English languages.

On para 73: Food security situation in Northern Rakhine

The food security situation in Northern Rakhine State is reflected quoting Word Food Security Assessment in the Northern Part of Rakhine State, Final

Report, July 2017 of WFP. In light of the following disclaimer posted on the WFP official website, the said report should not be cited anymore.

"The Government of the Republic of the Union of Myanmar and WFP are collaborating on a revised version of the report on the food security situation in the northern part of Rakhine State. WFP is cooperating with the Myanmar Government and consulting with concerned stakeholders on a joint review of the previous report, with the technical team from the Myanmar Government side. The process will be highly consultative, involving representatives from various ministries, and will respond to the need for a common approach for durable, long-term solutions to improve the food security in the northern part of Rakhine State of Myanmar. This strategy is in line with WFP's future cooperation with the Government, especially for the implementation of its Country Strategic Plan from January 2018. It is advised that in the meantime, the information contained in the previous six-page report, "Food Security Assessment in the Northern Part of Rakhine State, March-April 2017" not be cited formally or in any other way."

On para 75: Detention of Children

The security forces arrested attackers including six boys aged 12 to 16 years old on suspicion of attacking border polices near Gwa Sone Village in Maungdaw on 12 November 2016 during clearance operation. The six boys were detained at No.3 border police force camp by the order of Maungtaw township judge. Unfortunately, one of the boys, Mummad Rawphi was hospitalized twice in January at Buthidaung Hospital for stomach inflammation and he later died. The remaining five boys are being tried in a Juvenile court in a transparent manner and in line with obligations under Convention on the Rights of the Child (CRC).

General Comment on Humanitarian Access

The international organizations such as WFP, UNDP and SWISSAID have been providing assistance to improve socio-economic life in Kachin State. The NGO/INGOs access for providing humanitarian assistance has been allowed for IDP camps under government controlled area. However, access to IDP camps under non-government controlled area is depending on the decision of the military regional command of Myanmar Military in light of security concerns for NGO/INGOs personnel.

With regard to Rakhine State, local and international aid workers from humanitarian assistance organizations are necessary to report the local administration department and no restriction has been imposed on them. In the meantime, the local authorities are allowing humanitarian access to safe area in Shan State on Myanmar Medical Association, humanitarian assistance teams, DRC, ICRC, MSF-H and EU.

V. Conclusions

On para 79: Fact-Finding Mission

As situation in Rakhine state is multi-faceted, complex and highly sensitive, the idea of fact-finding mission will NOT only help to solve the situation, but rather it would further widen the division between the two communities there. It is also important to underline that the new government of Myanmar attaches high importance to promotion and protection of human rights, and shall never condone impunity. Additionally, the work of national measures to find a sustainable solution to Rakhine State such as Central Committee for the Implementation of Peace and Development in Rakhine State is in progress. The final report of the Advisory

Commission on Rakhine State led by Dr. Kofi was submitted to the government on 24 August 2017. The government welcomed recommendations for meaningful and long-term solutions. The government will carry out them to the fullest extent, and within the shortest timeframe possible, in line with the situation on the ground.

VI. Recommendations

On para 86: Establishing of OHCHR office

With regards to establishing of OHCHR office, it should be done in response to the need of the country, on the basic of mutually agreed terms and conditions, and at a pace acceptable to the host.